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PRACTICE DIRECTIVE NO. 3

Issue Closure in Contingent Appeals

Purpose

This Practice Directive sets out the Board's expectations on the closure of issues in appeals where the parties request the appeal be placed in contingent status pending a stated case or Board decision.

Recently, the Board has had a large number of appeals placed in contingent status pending a Board or Stated Case decision (as a test case) but after the issuance of that decision, the appeals are not resolved because either at least one party does not accept the test case decision or a party puts forward additional, unrelated issues after the fact. For example, if the test case is on the issue of classification, after the test case decision is issued, a party will indicate that value is also an issue.

This delays completion of previously contingent appeals and, given the volume of appeals in this situation, a significant backlog of appeals can develop.

In order to address this problem, this Practice Directive sets out the Board's expectations for the parties to close off issues before an appeal is placed in contingent status.

Directive

Unless otherwise ordered by the Board, if a party requests (verbally or in writing) to place an appeal in contingent status pending a decision of a stated case or Board hearing, the requesting party shall also identify all of its issues in the appeal by producing a Statement of Issues, Evidence & Analysis or by other means approved by the Board.

If the other party objects to the appeal being placed in contingent status, that party shall provide that written objection, with reasons, to the Board and requesting party, no later than 14 days from the date of the request. The Board will then determine the appropriate status of the appeal.

The other party shall correspondingly close and identify its issues by producing a Statement of Issues, Evidence & Analysis in response, or by other means approved by the Board.

This closure of issues shall occur **prior** to an appeal being placed in contingent status.

If a party wishes to raise a new issue after issues are closed, that party can only do so with leave of the Board.

The Board may consider appropriate consequences for a party's failure to identify and close all issues prior to an appeal being placed in contingent status.

If there are issues that are identified that are not dependent on the issue that is being determined in the test case, the parties must be prepared to immediately proceed with appeal management on those issues.

For the Board



Simmi K. Sandhu,
Chair